

Cleaner Air Oregon Hazard Index Technical Advisory Committee Charter

Oct. 10, 2018



[PAGE * MERGEFORMAT]

Table of Contents

Background	4
Purpose	5
Scope of Work	5
Technical Advisory Committee Ground Rules	6
Roles	7
Facilitator	7
Technical Advisory Committee Members	8
DEQ and OHA Staff	8
Audience Attendees at Committee Meetings	8
DEQ Support and Website	9
Technical Advisory Committee Meeting Information	9
Committee Membership	10
Travel Expenses	12
Public Records and Confidentiality	12
Information Exchange	12
Communication and Media Coverage	12
DEQ Contacts	13

Background

On April 6, 2016, Governor Kate Brown announced the launch of Cleaner Air Oregon (CAO), a new initiative in Oregon to reform industrial air toxics regulations and align them with public health, based on cancer and noncancer risk to people. The Oregon Department of Environmental Quality (DEQ) and the Oregon Health Authority (OHA) are currently in the midst of a formal CAO rulemaking process to create human health risk-based rules for industrial facilities that emit toxic air contaminants. The CAO rulemaking process began in March 2016 and included public input and comment. The proposed CAO rules will be presented to the Oregon Environmental Quality Commission (EQC) for approval and adoption in November of this year. The EQC is a five-member panel appointed by the governor of Oregon for four-year terms to serve as the DEQ's policy and rulemaking board.

In February 2018, the Oregon Legislature reviewed the proposed CAO rules, and considered program funding needs. The resulting Senate Bill 1541 required certain technical changes that resulted in changes to the proposed CAO rules. One of the changes made by the Legislature increased the noncancer Hazard Index Risk Action Level, or RAL, (referred to as a "benchmark" in S.B. 1541) for existing facilities from a Hazard Index of 1 to a Hazard Index of 5. This protocol deviates from the typical noncancer Hazard Quotient or Hazard Index goal of one (1) used in most human health risk assessments.

Thus, the current proposed CAO rules set the RAL for existing facilities at a noncancer Hazard Index value of 5. However, S.B. 1541 allows noncancer benchmarks to be set at a Hazard Index RAL as low as 3 (but no lower) for chemicals with "developmental" or "other severe" health effects as explained below.

Legislative Language Specific to Hazard Index Technical Advisory Committee Work

DEQ has decided to undertake a separate rulemaking for the hazard index work, which includes convening a Hazard Index Technical Advisory Committee (HI TAC) as stipulated by S.B. 1541. It is important for the committee members to be familiar with the language in S.B. 1541. The timeline involved with establishing a HI TAC necessitated that the hazard index work be conducted as a rulemaking separate from that of the greater CAO rulemaking.

S.B. 1541, Section 7, states that

"(1) the DEQ may regulate an existing air contamination source...based on a benchmark for excess noncancer risk that is adjusted to equal a Hazard Index number other than 5, if the department determines that the existing air contamination source emits a material amount of one or more toxic air contaminants that are identified by the Environmental Quality Commission by rule to be toxic air contaminants that are expected to have:

- (a) Developmental human health effects associated with prenatal or postnatal exposure; or*
- (b) Other severe human health effects.*

(2) The adjusted benchmark for excess noncancer risk applicable to an air contamination source... may be equal to a Hazard Index number determined by the department based on standards and criteria set forth by the commission in rule, but may be no less than a Hazard Index number of 3.

(3)(a) The commission shall adopt rules necessary to implement this section. The rules must, at a minimum:

(A) Identify toxic air contaminants for which the department may apply an adjusted benchmark for excess noncancer risk....; and

(B) Establish standards and criteria for determining the degree to which the department may adjust the benchmark for excess noncancer risk applicable to an individual air contamination source [as] described [above].

*(b) Before adopting rules under this section, the commission **shall establish and consider the recommendations of an advisory committee composed, at a minimum, of persons with technical expertise in toxic air contaminant risk assessment.***” (emphasis added)

Senate Bill 1541 in its entirety is accessible [here](#).

Purpose

The purpose of the CAO HI TAC will be to provide DEQ with recommendations on which of the approximately 140 toxic air contaminants with acute or chronic noncancer toxicity reference values (TRVs) cause developmental effects following pre-natal or post-natal exposure, and/or cause other severe health effects. After hearing and considering the committee’s recommendations, DEQ will recommend draft rules for consideration by the Oregon Environmental Quality Commission, which will assign RALs equal to a Hazard Index no less than 3, rather than 5, to certain chemicals. The EQC has the authority to adopt, modify, or decide not to adopt the proposed rules.

Scope of Work

The HI TAC members have committed to attend two all-day meetings, which will be held on October 23, 2018 and on December 4, 2018. In the first meeting, the TAC will discuss and recommend criteria and approaches to determine whether the noncancer effects of a given toxic air contaminant are likely to cause developmental or “other severe” effects. DEQ and OHA toxicologists will then use the criteria and approaches identified by the TAC to evaluate the toxic air contaminants with acute and/or chronic noncancer TRVs. The TAC’s second meeting will be an opportunity for the committee to review DEQ and OHA’s application of the criteria and approaches recommended by the TAC to regulated toxic air contaminants, and to provide comments to DEQ and OHA on the results. In-person participation is preferred; however, there will be an option to participate remotely via webinar and phone.

The HI TAC is intended solely as a technical advisory body, not as a committee designed to reflect stakeholder views. DEQ will record all HI TAC advice and opinions presented during the meetings, but not require TAC consensus. The HI TAC will be charged with the following responsibilities:

- Recommending criteria and approaches for determining whether toxic air contaminants with chronic or acute noncancer TRVs cause developmental effects following pre- or post-natal exposure and/or cause other severe health effects. Agency toxicologists will systematically apply these criteria and approaches, and any other appropriate criteria, to the list of toxic air contaminants proposed for regulation and provide the HI TAC with the filtered list of toxic air contaminants;
- Reviewing and evaluating the results of the agency toxicologists' criteria-based assessment of approximately 140 chemicals;
- Providing opinions on which of the approximately 140 chemicals should be recognized as having developmental and/or other severe health effects;
- Providing recommendations on which of the 140 chemicals should be assigned a Hazard Index value lower than 5, but not lower than 3 (as stipulated in statute);
- Providing written input to DEQ soon after each meeting, in the event that the HI TAC member finds that they need more time than is available at the meeting itself - any such written input would be made publicly available by DEQ;
- Reviewing and providing edits to meeting minutes and other forms of HI TAC documentation;

The following topics are outside the scope of the HI TAC:

- The proposed TRV and RBC established for each chemical; and
- proposed Cleaner Air Oregon rules as a whole.

Technical Advisory Committee Ground Rules

The HI TAC members agree to operate according to the following ground rules:

1. The goal of the HI TAC is to respectfully work together to identify criteria and approaches to determine those chemicals which have developmental and/or other severe health effects, from a list of approximately 140 chemicals having non-cancer effects and identified as Toxics Air Contaminants in the proposed CAO rulemaking.
2. The HI TAC may discontinue discussion of a particular topic at any time if the discussions do not appear likely to be productive or conclusive.
3. In the interest of maintaining continuity in discussions, HI TAC members commit to attending all official meetings.
4. Only appointed HI TAC members may participate in HI TAC deliberations. Members may participate in a meeting by phone if necessary.

5. The HI TAC can ask DEQ and OHA staff questions regarding the framing and context of the technical work conducted during and between meetings, and in regard to any briefing materials provided by staff to the HI TAC. In addition, the HI TAC can ask for clarification by DEQ and OHA staff on suggested overarching technical questions and goals previously provided to the HI TAC by the staff.
6. The HI TAC will be assisted by designated staff of the DEQ and the OHA, who will support discussions by members of the HI TAC. To maintain a focused and even flow of work, all direction given to and input requested from the HI TAC will come only from these designated staff. All requests from the public for HI TAC consideration of a specific issue must also come through and first be evaluated by designated staff.
7. Once a discussion by the TAC about a chemical or chemicals is complete, the opinions of each TAC member will be documented by DEQ staff. Consensus of the committee members on technical recommendations is not needed.
8. A member may be removed for cause, with concurrence by the Commission (OAR 340-246-0070(6)(c)), by a vote of the members. "Cause" may include, but is not limited to, failure to abide by these ground rules or an actual or potential conflict of interest, as those terms are defined by ORS 244.020.
9. All members will set personal biases aside and engage in good faith in all aspects of HI TAC discussions and deliberations.
10. Personal or professional attacks and prejudicial statements by committee members toward other committee members will not be tolerated.
11. Contact with the media will be limited to discussions of the objectives and progress of the discussions. No discussions characterizing the position of any other member, or the interest another member represents, will be held with the media. The DEQ requires that HI TAC members inform DEQ of any contact between the media and HI TAC members.

Roles

Facilitator

Responsibilities of the Facilitator:

- The facilitator will manage meetings to maintain conditions for productive committee work, including the communication of expectations regarding audience behavior to members of the audience.
- Ensures that all perspectives are heard.
- Ensures that all members adhere to the process and ground rules.
- Facilitates comments and input from the public during the 15-minute comment period at the end of each meeting.
- Encourages open, candid and robust dialogue.
- Starts and ends the meetings and agenda items on time.
- Encourages innovation by listening to all ideas.

- Tries not to lose good ideas during TAC discussions.
- Facilitates the conversation so the technical advisory committee stays focused on the agenda and on intended outcomes of the meeting; recognizes when the discussion is outside the scope of the meeting and redirects discussions.

Technical Advisory Committee Members

Responsibilities of the technical advisory committee members:

- Attend all meetings to ensure continuity throughout the process.
- Prepare for and set aside time for the meetings.
- Provide DEQ and OHA staff with copies of relevant research and documentation cited during the meeting.
- Stay focused on the specific topics for each meeting.
- Comment constructively and in good faith.
- Treat everyone with respect and assume good intentions when opinions differ.
- Allow one person to speak at a time.
- Be courteous by not engaging in sidebar discussions.
- Avoid representing to the public or media the views of any other technical advisory committee member or the technical advisory committee as a whole.
- Ask technical and topic scope questions of attending DEQ and OHA staff during meetings as needed.
- Will keep the stated statutory purpose of the HI TAC work in mind during committee deliberations.

DEQ and OHA Staff

DEQ and OHA staff are committed to making the most effective use of committee member's time by:

- Establishing clear goals, meeting objectives and agendas for each committee meeting.
- Providing appropriate briefing materials to the committee prior to each meeting and with sufficient time for committee review prior to each meeting.
- Giving technical advisory committee members reasonable access to staff.
- Encouraging all members to take part in discussions. Providing a clear description of members' roles, the technical advisory committee timeline, the level of agreement expected and feedback on how members' input is used.
- Answering technical and topic scope questions from the TAC during meetings as needed.

Audience Attendees at Committee Meetings

Those who attend the technical advisory committee meetings, but are not members of the technical advisory committee are there only to observe and not to actively participate. DEQ will schedule a 15-

minute period at the end of each meeting for audience members to provide comments or ask questions. However, public comments will only be accepted and recorded during the future public comment period for the Hazard Index rulemaking, so audience members must be aware that comments they make during the meeting's 15-minute comment period will simply be recorded in the meeting notes.

DEQ Support and Website

DEQ will post agenda and meeting materials so they are accessible through the Cleaner Air Oregon Hazard Index Committee website at least one week in advance, if possible. The DEQ lead for the HI TAC will provide meeting summaries that highlight committee discussions, different perspectives and input of committee members. DEQ will not prepare a formal committee report. Meeting summaries will be posted to the technical advisory committee website and will be part of the public record.

Technical Advisory Committee Meeting Information

- Meetings will be facilitated by a consultant under contract to DEQ.
- Meetings will begin at 8 am and continue up to 5 pm, with the expectation of including a working lunch, at which DEQ will provide food and beverages for the committee.
- The HI TAC meetings are open to the public, but audience members will not be allowed to interrupt HI TAC discussions or engage HI TAC members during the working meeting. However, there will be a 15-minute time slot allowed for the public to make comments near the end of the meeting day. The facilitator will regulate this process.
- Meetings will be advertised on the Cleaner Air Oregon Hazard Index Committee webpage (<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/acaohi2019.aspx>) and emailed to people who have signed up for information on the rulemaking;
- Meetings will be accessible to technical advisory committee members via a call-in number if necessary and via a videoconference, if necessary technology is available;
- Meetings will be noticed by email to those who have signed up for updates on this rulemaking; and
- noticed on DEQ's Facebook/Twitter account.
- Meeting materials will be accessible through the Cleaner Air Oregon Hazard Index Committee webpage: <https://www.oregon.gov/deq/Regulations/rulemaking/Pages/acaohi2019.aspx>.

- DEQ will prepare formal meeting minutes after review by all TAC members for accuracy and comprehensiveness. Meeting minutes will document the technical advisory committee discussions, as well as the different perspectives and recommendations of individual technical advisory committee members. DEQ will make the meeting minutes accessible to the public.
- The HI TAC will meet two times in Portland, Oregon on the following dates. The location will be announced prior to the meetings:
 - **October 23, 2018: 8 a.m. – 5 p.m., Conference Room, Third Floor, 700 NE Multnomah Street, Portland, Oregon.**
 - **December 4, 2018: 8 a.m. – 5 p.m., Conference Room 1E, Portland State Office Building, 900 NE Oregon Street, Portland, Oregon.**
- The meeting duration times above may vary depending on topics and technical advisory committee progress.
- DEQ and OHA will provide technical and administrative support to the HI TAC before, during, and after each meeting.

Committee Membership

This panel of seven HI TAC members, appointed by the EQC in July 2018, includes five members recommended for appointment by DEQ in consultation with OHA, and two at-large members identified through an on-line application process and recommended for appointment by DEQ and OHA. All TAC members have experience related to the evaluation, research and derivation of non-cancer toxicity values (e.g., Reference Concentrations), including the application of uncertainty factors. A roster of the technical advisory committee members can be accessed at:

<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/acaohi2019.aspx>.

The five members directly recommended to the EQC by DEQ and OHA are individuals who have specific technical qualifications relevant to the HI TAC work, such as:

- Currently work in one of the authoritative scientific agencies used as a source for setting non-cancer reference concentrations in the Cleaner Air Oregon draft rules.
- Have clinical training in pediatrics and developmental toxicology;
- Currently work as an academic researcher whose work includes a focus on developmental toxicology.
- Currently work as an academic researcher whose work includes a focus on inhalation toxicology.
- Currently work as a risk assessor or toxicologist in a health-based air toxics regulatory program in another state.

The minimum qualifications for the two appointed at-large TAC positions were:

- A minimum educational level of a Master of Science (MS) in toxicology, epidemiology, or a related field; and
- Five years of experience with risk assessment and/or toxicology assessments of toxic air contaminants; and
- Expertise in one or more of specializations noted above for the appointed members (institutional affiliations not required).

Conflicts of Interest

All applicants were directed to disclose to DEQ whether their membership on this committee will create any actual or potential conflicts of interest. All seven members reported no conflict of interest. Although the HI TAC members have already seen the requirements to insure no conflict of interest with their participation in the HI TAC, the information is provided below in order to make it a formal part of the charter:

1. An actual conflict of interest, as defined in ORS 244.020, is any action, decision, or recommendation by a person acting in a capacity as a public official that provides a monetary benefit or detriment to the person or person's relative, or any business with which the person or person's relative is associated.
2. Because conflicts of interest require direct monetary profit or detriment, DEQ expects that it would be very rare for an HI TAC member within the context of a scientific advisory committee to have an actual or potential conflict of interest as defined in ORS 244.020.
3. However, if any HI TAC member is directly involved with a project where the outcome of a recommendation might benefit a business or organization with which the HI TAC member or relative is associated, the HI TAC member will identify the actual or potential conflict of interest to the DEQ and recuse himself/herself from that particular decision process if the other HI TAC members and DEQ think a recusal is necessary.
4. If any HI TAC member is aware that their or their relative's past, current or future association with a business or organization may create the appearance of a conflict of interest or impropriety regarding technical recommendations, the HI TAC member will notify DEQ. This option will help DEQ and the HI TAC to be aware of and prepared for any complaints of conflicts of interest that may arise.

Public Participation Opportunities

The two scheduled HI TAC meetings are open to the public through direct attendance or through telephone attendance. Audience members will be able to observe or listen to the proceedings, but will not be allowed to interrupt committee discussions. At the close of each meeting, 15 minutes will be allotted for audience comments or questions. However, audience comments will only be documented in the meeting notes; formal comments from the public will need to be submitted during the rulemaking comment period, which will occur in 2019.

A fiscal advisory committee will provide input on the fiscal impact statement and fee structure in spring 2019.

DEQ will seek public comment on the proposed rule in early summer 2019. DEQ will consider all comments before preparing a final rule proposal for consideration by the EQC later in 2019.

Travel Expenses

DEQ is able to reimburse any out-of-town committee members for travel expenses, if DEQ approves them in advance. DEQ has contacted TAC members already with details on the reimbursement process.

Public Records and Confidentiality

All technical advisory committee records, formal and informal, become part of the rulemaking record. All DEQ rulemaking records are available for public inspection and copying. DEQ does not assume responsibility for protecting proprietary or confidential business information shared during technical advisory committee meetings.

DEQ captures and maintains technical advisory committee agendas, meeting summaries, materials and technical advisory committee reports and member recommendations. DEQ will destroy the technical advisory committee record 10 years after Oregon repeals the related rules in accordance with public records retention schedules.

Information Exchange

If a technical advisory committee member feels that they have relevant information to share with the rest of the committee, that relevant information will be sent to Sue MacMillan, DEQ lead for the HI TAC, and she will disseminate it to the committee as a whole. If feasible, a committee member will provide information to DEQ as far in advance as possible of the meeting at which the relevant information will be used. If a member believes the relevant information is proprietary in nature, the member will provide a general description of the information and the reason for not providing it.

Communication and Media Coverage

DEQ and OHA will respond to public or media inquiries associated with the organization, structure, process and goals for the HI TAC and related technical work. While free to communicate and share individual perspectives with the media and others, DEQ and OHA asks technical advisory committee members to offer their personal viewpoint only, and to refrain from speaking for other technical advisory committee members or the technical advisory committee as a whole. We ask members to vet ideas and issues concerning the program at technical advisory committee meetings before discussing them outside of the technical advisory committee structure in order to preserve the cohesion of the team. When asked for information about the purpose or activities of the technical advisory committee, DEQ and OHA asks you to refer the inquirers to the Cleaner Air Oregon Hazard Index Committee website.

DEQ Contacts

Primary Contact:

Sue MacMillan

DEQ Staff Lead for the Hazard Index Technical Advisory Committee

(503) 229-6458

macmillan.susan@deq.state.or.us

Media Inquiries:

Jennifer Flynt

Chief Public Information Officer

503-229-6585

flynt.jennifer@deq.state.or.us

Alternate Contacts:

Joe Westersund

Project Manager, Cleaner Air Oregon

(503) 229-6403

Westersund.joe@deq.state.or.us

Keith Johnson

Special Advisor to the Director for Cleaner Air Oregon

(503) 229-6431

Johnson.keith@deq.state.or.us